

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 15, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP209-CR

Cir. Ct. No. 2008CF5454

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MAURICE C. HALL,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: KEVIN E. MARTENS and JEFFREY A. WAGNER, Judges.
Affirmed.

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 KESSLER, J. Maurice C. Hall appeals a judgment of conviction, following a jury trial, of three counts of sexual assault of a child, three counts of incest, one count of intimidation of a victim, and one count of child enticement.

Hall also appeals from the order denying his postconviction motion for a new trial. We affirm.¹

BACKGROUND

¶2 Hall was charged with three counts of sexual assault of a child, three counts of incest, one count of intimidation of a victim, and one count of child enticement. The charges stemmed from multiple allegations of sexual abuse made by Hall's nine-year-old daughter.

¶3 Approximately one week after Hall's initial appearance, Hall's defense counsel requested a competency evaluation, stating that Hall had a prior psychiatric diagnosis. Hall was subsequently examined by Dr. Deborah Collins. Dr. Collins's report indicated that Hall was competent to participate in the proceedings against him. Specifically, the report stated:

Despite Mr. Hall's history of psychiatric treatment, it is this examiner's opinion that he does not presently demonstrate a substantial lack in his mental capacity to understand the pending proceedings or aid in his defense. In support of this opinion, I would note the following factors:

1. Mr. Hall was spontaneously aware of the pending charges and able to provide approximately accurate names of each of them. He is familiar with the contents of the criminal complaint and substance of the allegations. Mr. Hall displayed his motivation and ability to reply to the allegations from a legally self-serving perspective and one which includes asserting his innocence of any wrongdoing.
2. Mr. Hall displayed his capacity to engage in a coherent rational exchange focused on his legal predicament....

¹ The Honorable Kevin E. Martens presided over the jury trial. The Honorable Jeffrey A. Wagner entered the order denying postconviction relief.

3. Mr. Hall displayed the capacity to maintain his composure and behavioral control throughout the entirety of the clinical interview.
4. Mr. Hall displayed the capacity to grasp with essential accuracy a range of legal concepts such as plea options available to him and the role functions of his own attorney, the prosecutor and a judge or jury in the event of trial. I would note Mr. Hall's knowledge accrued in part by virtue of his legal experiences.
5. Mr. Hall displayed the ability to reason vis-à-vis potential options consistent with his claims of innocence.
6. Mr. Hall displayed the capacity to grasp without significant distortion how a trial process might unfold and the plea bargaining process.

It is such factors that lead me to conclude that defendant Maurice Hall is presently competent to proceed.

.... Given his reported history, however, I would urge court officers to remain sensitive in the event of any significant changes in his overall mental status as such a factor may signal decline in his competency and warrant his reexamination.

¶4 The case proceeded to trial. On the second day of trial, Hall's defense counsel told the trial court that the parties had reached a plea agreement. Hall immediately interjected, stating:

No. No, I ain't pleading guilty to that, man. I can't do that, dude. I didn't do anything wrong.... I understand the precautions, I understand the outcome what would happen if I lose, but, you know, I mean I've come this far, waited a year to happen for this day.... I understand, you know, I have to clear my name somehow.

¶5 Hall's defense counsel then told the trial court that Hall had not received his antidepressant medications for two days and "suspect[ed] that it might be affecting [Hall's] judgment at this point." The trial court engaged Hall in the following colloquy:

[Trial Court:] Is [not receiving your medication for two days] having any effect on your ability to understand what's going on in court?

[Hall:] Not so much of my understanding but my, well, I don't know "understanding," but it helps me concentrate a little bit more. Not so much comprehend but make decisions. You know. I mean this is a serious decision and if I -- usually when I have a medication I can make a better decision. You know what I'm saying? Doesn't work as fast as, boom, like that or anything like that, but.

....

[Trial Court:] Do you feel like you're confused right now or disoriented in any way?

[Hall:] I'm very confused. I don't understand why this is going on. The way it is.

[Trial Court:] That's not a medication issue, Mr. Hall. My question is whether or not taking your medication is causing you to be confused at all.

[Hall:] It is clouding my judgment.

[Trial Court:] You feel it's clouding your judgment?

[Hall:] Just a little bit.

[Trial Court:] How so. Can you explain that?

[Hall:] Well, my attorney came to me with a reasonable plea bargain, max of 22 years, and normally I probably would have thought it through and, you know, agreed to it. But, you know, I -- I signed the papers you know, I recanted. He walked back in there and I discussed a little bit more with him, and you know, we agreed to it, recanted again. I just don't know what to do. I -- I can't make the right call, I guess. Racing thoughts. Hard to explain. I mean, you can actually get hold of the House of Correction. They'll even tell you I'm on medication. Been on it for almost a year now.

¶6 Based on Hall's statements, the trial court determined that Hall could not knowingly and voluntarily enter a plea agreement. The trial court stated that proceeding to trial was the "default" option, absent any findings of legal

incompetence. In determining that Hall was competent to stand trial, the trial court stated:

I was looking back on [the] ... report addressing competency. That was submitted by Dr. Debra [sic] Collins. Just to get a little more information. The information involving Mr. Hall and his medication and whether he's able to, I guess "concentrate" maybe in his words, and fairly assess whatever offer the [S]tate's extended is certainly an important issue. It's relevant.

If I were to go ahead and accept a plea, that is I have to be satisfied that if Mr. Hall pleads guilty to any charge, including whatever the negotiation was, that he can do so in a knowing manner....

I think what Mr. Hall's describing to me is he's just not sure if he can make that decision right now, and that his medication issue, he feels, is contributing to that. That's certainly relevant to the plea, but I'm not so sure I feel it's otherwise relevant to going forward.

The issue is if the circumstance is such that Mr. Hall's not in a position to enter into, that is, any knowing plea, then the alternative is to go ahead and continue the trial. And that's really the other option, unless, again, there's a basis for me to genuinely question legal competency.

I don't certainly question that. That involves an understanding of the nature of the proceedings and an ability to assist in one's defense, and there's nothing that I've observed that would suggest to me that those things are genuine issues.

....

At this point I feel it's really the only option I have as far as how to address this. In any circumstance where a plea can't be entered into knowingly or voluntarily, sort of the default of the option then is you proceed with trial, and that's what we're prepared to do.

¶7 The trial continued and the jury found Hall guilty as charged. Hall filed a postconviction motion for a new trial, arguing that the trial court violated his right to due process when it failed to *sua sponte* order a competency evaluation

after Hall indicated that his lack of medication may have been clouding his judgment. The postconviction court denied the motion, finding that the trial court “observed nothing in the defendant’s responses or demeanor to suggest that he lacked the competency to proceed with the trial.” This appeal follows.

DISCUSSION

¶8 On appeal, Hall contends that the trial court erred when it found him competent to stand trial, but not competent to enter a plea. Specifically, Hall argues that the trial court erroneously proceeded to trial as the “default” option, rather than order a competency exam after finding Hall unable to knowingly enter a plea. The record demonstrates that Hall understood the nature of the proceedings against him and was competent to stand trial.

¶9 “We review an order denying a postconviction motion seeking a new trial under the erroneous exercise of discretion standard.” See *State v. Randall*, 197 Wis. 2d 29, 36, 539 N.W.2d 708 (Ct. App. 1995). ““The trial court properly exercises its discretion if its determination is made according to accepted legal standards and if it is in accordance with the facts on the record.”” *Id.* (citation omitted).

¶10 We will not disturb a trial court’s determination as to whether there is reason to doubt a defendant’s competence unless the court exhibited an erroneous exercise of discretion. *State v. Weber*, 146 Wis. 2d 817, 823, 433 N.W.2d 583 (Ct. App. 1988). WISCONSIN STAT. § 971.14(1r)(a) (2011-12)² requires a trial court to conduct competency proceedings if there is “reason to

² All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

doubt” that the defendant is competent to proceed. *Id.* A defendant is incompetent to stand trial, plead guilty, or plead no contest if he lacks substantial mental capacity to understand the proceedings or assist in his own defense. *Godinez v. Moran*, 509 U.S. 389, 402 (1993); WIS. STAT. § 971.13(1). More specifically, a defendant is incompetent if he “lacks the capacity to understand the nature and object of the proceedings, to consult with counsel, and to assist in the preparation of his ... defense.” *State v. Byrge*, 2000 WI 101, ¶27, 237 Wis. 2d 197, 614 N.W.2d 477. A reason to doubt competency can arise from the defendant’s demeanor in the courtroom, his colloquies with the trial court judge, or by motion from either party. *Id.*, ¶29.

¶11 Determining competency to stand trial is a “judicial inquiry, not a medical determination.” *Id.*, ¶31. A history of psychiatric problems and a clinical diagnosis of mental illness do not necessarily mean that a defendant is incompetent to stand trial. *Id.*, ¶¶31, 48-49. The pertinent determination is the defendant’s mental capacity to understand the proceedings and assist defense counsel with a reasonable degree of rational understanding at the time of the proceedings. *Id.*, ¶31.

¶12 The State concedes that the trial court erroneously stated that trial was the “default” option because the standard for competence to stand trial and competence to enter a guilty plea are the same. *See Godinez*, 509 U.S. at 402 (In determining whether a defendant is competent to stand trial, plead guilty or no contest, the trial court is to consider whether a defendant has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the defendant has a rational and factual understanding of the proceedings against him.). *See also* WIS. STAT. § 971.13(1). We conclude that nothing in the record provides a reason to doubt Hall’s competence to stand trial.

A review of the record reveals that: Hall gave appropriate, reasoned answers during his colloquy with the trial court; Hall understood the nature of the charges against him; and Hall understood the consequences of both accepting a guilty plea and proceeding to trial. Dr. Collins's report indicated that Hall was: intent on maintaining his innocence; "disgust[ed]" by the charges against him; aware of his legal options; and competent to stand trial. The trial court considered Dr. Collins's report in its decision. Indeed, Hall told the trial court that he was adamant about "clear[ing his] name." Therefore, it stands to reason that Hall's colloquy with the trial court reflected the difficulty of deciding whether to accept a guilty plea or continue to maintain his innocence. The colloquy did not demonstrate that Hall lacked the *capacity* to understand his alternatives and their consequences. Hall told the trial court that he was struggling to make the "serious decision" and changed his mind several times, but that his comprehension was intact. The fact that Hall simply could not decide, even with a somewhat "cloud[ed] judgment," does not, on the record before us, cast doubt on Hall's competency to proceed to trial. The trial court properly exercised its discretion and the postconviction court properly denied the motion for a new trial.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.

